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Supreme Court of the United States

OCTOBER TERM, 1962

No. 57

MICHAEL CLEARY,

Petitioner,

v.

EDWARD BOLGER,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONER

WILLIAM P. SIRIGNANO,
General Counsel, Waterfront Commission
of New York Harbor, and Attorney
for Petitioner,
15 Park Row,
New York 38, N. Y.

Of Counsel:
IRVING MALCHMAN,
Assistant to the General Counsel.

Dated: October, 1962.

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1. In connection with the statement in petitioner's brief (p. 24) that it is problematical whether or not the result at law would actually be adverse to respondent Bolger, especially in the light of this Court's recent decision in *Mapp* v. *Ohio*, 367 U. S. 643, the recent decision by the New York Court of Appeals in *People* v. *Rodriguez*, 11 N. Y. 2d 279, 229 N.Y.S. 2d 353 (1962), is particularly apposite. There, a murder conviction was reversed upon the ground that it is violative of a criminal defendant's rights to interrogate him after arraignment and that therefore the admission of a co-defendant's confession, which had been obtained after the co-defendant's arraignment and which implicated the defendant, required that

the defendant be granted a new trial. Further, it was held as to the defendant who also confessed that, if defendant had confessed as a result of being confronted with evidence obtained as a result of an illegal search and seizure, the *Mapp* rule required the exclusion of such confession from evidence. The New York Court of Appeals specifically held that under *Mapp* the "fruit of poisonous tree" doctrine is applicable to confessions.

2. Respondent Bolger states in his brief that Congress in consenting to the Waterfront Commission Compact reserved the right to repeal or amend the Compact, that this makes the Commission a federal agency, and that this in turn apparently makes petitioner a federal agent for purposes of the Fourth Amendment (this last conclusion is not explicitly spelled out by Bolger).

First, Congress, in approving the Compact (Act of August 12, 1953, 67 Stat. 541, c. 407) did not reserve the right, as asserted by petitioner, to repeal or amend the Compact. Rather, Congress reserved only the right to alter, amend, or repeal the consent given by the Act of August 12, 1953, which is of course a reservation that is markedly different from that asserted by respondent Bolger. In fact, Congress, in its Act of August 12, 1953, approving the Compact, expressly gave its approval to future supplementary *state* legislation in accord with the objectives of the Compact, a "provision in the consent by Congress to a compact . . . so extraordinary as to be unique in the history of compacts". *DeVeau* v. *Braisted*, 363 U. S. 144, 154. Moreover, apart from according its legal consent to the original Compact, the federal government has had no part whatever in the creation, maintenance or operation of the Commission.

The law in any event is established that Congressional consent to an interstate compact does not constitute the agency created thereunder a federal instrumentality.

E.g., *Hinderlider* v. *La Plata River Co.*, 304 U. S. 92 (interstate compact not a treaty or statute of United States within meaning of statute defining this Court's appellate jurisdiction); *Commissioner* v. *Shamberg's Estate*, 144 F. 2d 998 (2nd Cir. 1944), *cert. den.*, 323 U. S. 792 (Port of New York Authority is a "political subdivision" of States of New York and New Jersey within meaning of Revenue Act excluding from taxation the interest on obligations of a state or political subdivision thereof); *State* v. *Murphy*, 36 N. J. 172, 184-187, 175 A. 2d 622, 629-630 (1961) (Waterfront Commission is subject, as a state agency, to the discovery provisions of the New Jersey Rules of Criminal Practice and is therefore required to make available to a criminal defendant a transcript of such defendant's testimony before the Commission).

Respectfully submitted,

WILLIAM P. SIRIGNANO,
General Counsel of the Waterfront
Commission of New York Harbor,
Attorney for Petitioner,
15 Park Row,
New York 38, N. Y.

Of Counsel:

IRVING MALCHMAN,
Assistant to the General Counsel.

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